

**Commonwealth of Massachusetts
Executive Office of Health and Human Services**

NOTICE OF PUBLIC HEARING

Pursuant to the authority of M.G.L. c. 118E and in accordance with M.G.L. c. 30A, four remote public hearings will be held on Monday, May 24, 2021, each at the respective time listed below, relative to the adoption of amendments to the regulations listed below. The specific information described immediately below applies only to the amendments to 101 CMR 429.00, 101 CMR 428.00, and 101 CMR 346.00:

- A. The amended regulation is proposed in accordance with M.G.L. c. 118E, Section 13D, which requires EOHHS to establish by regulation rates for social service programs.
- B. Each cost adjustment factor (CAF) described below was determined by using baseline and prospective Massachusetts Economic Indicator data from IHS Economics – Fall 2020 Forecast, optimistic scenario data, and reflects the period between the rates' base period (calendar year 2021 Q2) and the prospective period of fiscal years 2022 and 2023.
- C. As part of the workforce initiative, staff salaries, with the exception of the program management position, have been benchmarked to the Massachusetts Bureau of Labor Statistics (BLS) median wages. The management salary has been benchmarked to the FY19 Uniform Financial Statements and Independent Auditor's Report (UFR) weighted average for management positions. The programmatic expenses have also been benchmarked to the FY19 UFR.
- D. Rates being updated incorporate an employer and employee contribution required by the Massachusetts paid family and medical leave law.
- E. The tax and fringe rate has been benchmarked to 22.40%.
- F. The administrative allocation has been benchmarked to 12%.
- G. The separate workforce initiative rate has been removed from the regulation because the workforce initiative goal of the rate review has been met with the incorporation of BLS benchmarking into the rates.

- 1. **9:30 a.m.: 101 CMR 429.00: *Rates for Certain Sexual and Domestic Violence Services.*** In addition to the specific information described above, the proposed amendments include the following: The proposed amendments update certain sexual and domestic violence services by a CAF of 2%. The intimate partner's abuse education program unit has been redefined from a monthly FTE purchase rate to a monthly cohort rate.
- 2. **10:30 a.m.: 101 CMR 428.00: *Rates for Certain Independent Living Communities and Services.*** In addition to the specific information described above, the proposed amendments include the following: The independent living communities and services rates are being updated to include an increase by a CAF of 2%.
- 3. **11:00 a.m.: 101 CMR 346.00: *Rates for Certain Substance-Related and Addictive Disorders Programs.*** In addition to the specific information described above, the proposed amendments include the following: The proposed amendments update the rates for the Residential Rehabilitation programs, including Clinically

Managed Detoxification Programs, Supportive Case Management services, Triage, Engagement and Assessment (TEA) program services, and Office Based Opioid Treatment services with rates governed by this regulation. The proposed amendments to the aforementioned service rates include an increase by a Cost Adjustment Factor (CAF) of 2.00%. Salaries and full time equivalent (FTE) staffing positions are being updated in the model budgets to align with similar programs and more robust staffing patterns. The total estimated annual cost to state government from the addition of the rate being established via the proposed amendments to this regulation is \$49.6M, of which \$46.6M represents the estimated annual aggregate expenditures attributable to Medicaid-covered services provided to MassHealth members. Of that, \$0 in annual aggregate expenditures is attributable to Medicaid-covered state plan services provided to MassHealth members, and \$46.6M in annual aggregate expenditures is attributable to 1115 Waiver services provided to MassHealth members

4. **12:00 p.m.: 101 CMR 345.00: *Rates for Temporary Nursing Services.*** Pursuant to M.G.L. c. 111, §72Y and c. 118E, §13D, the Executive Office of Health and Human Services (EOHHS) must provide an annual industry-wide class rate for TNS providers. The statute also specifies that the maximum rates are to be set by region (MA has six health service areas), type of facility (hospital or nursing home), position type (RN, LPN, CNA), and shift (weekday shifts 1 through 3 and weekend shifts 1 through 3). This regulation was last updated effective August 1, 2020. The regulation establishes the maximum rates for temporary nursing services, but a payer may negotiate rates for temporary nursing services that are below these maximum rates. The wage components were calculated using the median wages and benefits from the 2018 nursing facilities cost report (HCF-1) and the 2018 hospital cost report (HCF-403). TNS hours from the 2018 NSR were used to calculate spending and fiscal impact. For each health service area (HSA), the median hospital wages by type of service were blended with the statewide median for those services (50:50). The nursing home medians were based on the median wages by HSA and type of position. The median wages were then adjusted by an inflation factor (cost adjustment factor, or CAF) using Q1 2018 through Q4 2018 as the base period and Q3 2021 through Q2 2022 as the rate period. The CAF is based on the Massachusetts consumer price index and inflates components from the base year(s) of their respective cost reports to the rate year. For this analysis, the CAF was calculated to be 7.97% using Q1 2018 through Q4 2018 as the base period, and Q3 2021 through Q2 2022 as a rate period for hospitals and nursing facilities. Median wages were next adjusted by shift differentials. The hospital shift differential information comes from the Massachusetts Hospital Association's Hospital Salary Survey for 2017, and the nursing facility shift differential information comes from the Massachusetts Senior Care Association's Annual Employment Survey for 2016. Shift differential information from 2017 for hospitals and from 2016 for nursing homes, are the most recent data available. The same years of data were used in the TNS rates effective 1/1/2020 and 8/1/2020. The shift differentials were adjusted by a CAF using Q1 2017 as the base period for hospital data and Q2 2016 as the base period for nursing facility data, and a rate period of Q3 2021 through Q2 2022 for both the hospitals and nursing facilities. The CAF for shift differentials was calculated to be 11.26% for hospitals and 13.32% for nursing facilities. In the calculations for the proposed rates, the administrative mark-up was held at the same

percentage as in previous analyses, 35.43%. After adding the wages and administrative components, a profit factor of 5.31% was applied. The percentage was originally derived from TNS cost data prior to EOHHS regulation. The final hourly rate was determined for each HSA by adding the median wage, administrative mark-up, profit factor add-on, and shift differentials. The proposed amendments to the regulation at 101 CMR 345.00 also include modifying the fixed-term travel employee disclosure form submission under 101 CMR 345.05: *Reporting Requirements* to require TNS agencies to maintain records about the classification of these employees, which will relieve the TNS agencies from related regular submission requirements.

The proposed amended regulations contain rates effective for dates of service on or after July 1, 2021. There is no fiscal impact on cities and towns.

If you would like to testify at any of the hearings, please register online at www.mass.gov/service-details/executive-office-of-health-and-human-services-public-hearings. To join the hearing online, go to <https://statema.webex.com>, and enter meeting ID 644 151 469. To join the hearing by phone, call (866) 692-3580, and enter meeting ID 644 151 469# when prompted.

You may also submit written testimony instead of, or in addition to, live testimony. To submit written testimony, please email your testimony to ehs-regulations@mass.gov as an attached Word or PDF document or as text within the body of the email with the name of the regulation in the subject line. All written testimony must include the sender's full name, mailing address, and organization or affiliation, if any. Individuals who are unable to submit testimony by email should mail written testimony to EOHHS, c/o D. Briggs, 100 Hancock Street, 6th Floor, Quincy, MA 02171. Written testimony must be submitted by 5:00 p.m. on Monday, May 24, 2021.

To review the current drafts of the proposed actions, go to www.mass.gov/service-details/executive-office-of-health-and-human-services-public-hearings or request a copy in writing from MassHealth Publications, 100 Hancock Street, 6th Floor, Quincy, MA 02171. To view or download related supporting materials, go to www.mass.gov/service-details/proposed-regulations-supporting-materials.

Special accommodation requests may be directed to the Disability Accommodations Ombudsman by email at ADAAccommodations@state.ma.us or by phone at (617) 847-3468 (TTY: (617) 847-3788 for people who are deaf, hard of hearing, or speech disabled). Please allow two weeks to schedule sign language interpreters.

EOHHS may adopt a revised version of the proposed actions taking into account relevant comments and any other practical alternatives that come to its attention.

In case of inclement weather or other emergency, hearing cancellation announcements will be posted on the MassHealth website at www.mass.gov/service-details/executive-office-of-health-and-human-services-public-hearings.

April 30, 2021